

DETERMINATION OF MERGER NOTIFICATION M/17/012 - KANTAR MEDIA / NEWSACCESS

Section 21 of the Competition Act 2002

Proposed acquisition by Mediawatch Limited trading as Kantar Media of sole control of Newsaccess Limited

Dated 11 July 2017

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Mediawatch Limited trading as Kantar Media (“Kantar Media”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess Limited (“Newsaccess”), for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Kantar Media.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Kantar Media would acquire sole control of Newsaccess will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission



PROPOSALS BY KANTAR MEDIA TO THE COMMISSION RELATING TO THE PROPOSED ACQUISITION OF NEWSACCESS (“Proposals”)

RECITALS

- a) On 09 March 2017, the proposed acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess was notified to the Commission under section 18(3) of the Act.
- b) Pursuant to section 20(3) of the Act, Kantar Media has submitted to the Commission Proposals relating to the Proposed Transaction for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Kantar Media.
- c) The Proposals submitted by Kantar Media are aimed at replacing the competition that would have been lost as a result of the Proposed Transaction in the potential market for the provision of media monitoring services (print and broadcast) in the State.

A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Archive Commitment**” means the commitment outlined at paragraph 11 of these Proposals;

“**Archive Facility**” means a repository of the media content that has been provided to a Customer by Newsaccess during the period up to and including the 30th of April 2017, in accordance with such Customer’s current contract with Newsaccess for the provision of a Media Monitoring Service;

“**Commencement Date**” means the date of the Commission's Determination;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Contract Customer**” means any person or business which (a) was a customer of Newsaccess on the Commencement Date; and (b) was receiving a Media Monitoring Service from Newsaccess pursuant to a fixed term contract with Newsaccess on the Commencement Date;

“**Customer**” means any person or business which was a customer of Newsaccess on the Commencement Date;

“**Determination**” means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;



“Divestment Commitment” means the commitment outlined at paragraphs 2 to 5 of these Proposals;

“Kantar Media” means Mediawatch Limited, a private limited company, incorporated under the laws of Ireland (Registration No. 352153), which trades as Kantar Media and has its registered address at 1st Floor Marina House, Block V East, Eastpoint Business Park, Dublin 3;

“Media Monitoring Service” means the monitoring of press and broadcast media content in the State and providing clients with access to such content and/or analysis thereof;

“Merger Notification Commitment” means the commitment outlined at paragraph 13 of these Proposals;

“Newsaccess” means Newsaccess Limited, a private limited company, incorporated under the laws of Ireland (Registration No. 123007), which has its registered address at 1st Floor Marina House, Block V East, Eastpoint Business Park, Dublin 3;

“Newsaccess Fixed Assets” means all scanners, computers, servers, printers and related equipment owned by Newsaccess and used by Newsaccess to provide a Media Monitoring Services up to and including the 9th of March 2017;

“NLI Archive Licence” means a licence issued by Newspaper Licensing Ireland (NLI) that a customer is required to have if such customer requires its media monitoring service provider to maintain an archive of media content for over 30 days on the customer’s behalf;

“Pricing Commitment” means the commitment outlined at paragraph 9 of these Proposals;

“Proposed Transaction” means the proposed acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess, pursuant to a share purchase agreement between Kantar Media, Pictavia Holdings Limited, William McHugh and Stuart McHugh dated 01 February 2017, which was notified to the Commission pursuant to section 18(3) of the Act on 09 March 2017;

“Termination Date” means (a) for a Contract Customer, the date on which such Contract Customer's current fixed term contract with Newsaccess expires, or the date falling 12 months after the Commencement Date, whichever is the later; or (b) for a Customer which has a rolling contract with Newsaccess which is terminable on 30 days’ notice, the date falling 12 months after the Commencement Date;

“Purchaser” means a third party purchaser of the Newsaccess Fixed Assets which were required to be divested by Kantar Media pursuant to these Proposals and approved by the Commission; and



"**Staffing Commitment**" means the commitment outlined at paragraph 8 of these Proposals.

B. Undertakings by Kantar Media

Divestment Commitment

2. Kantar Media undertook to divest the Newsaccess Fixed Assets prior to the date of the Determination and the following has occurred:
 - a) On 28 June 2017, Newsaccess entered into a final binding sale and purchase agreement with the Purchaser for the sale of the Newsaccess Fixed Assets to the Purchaser. The Purchaser is (a) currently providing or is intending to provide a Media Monitoring Service to customers based in the State; and (b) unconnected to and independent of each of Kantar Media and Newsaccess.
 - b) The sale and purchase agreement between Newsaccess and the Purchaser for the sale of the Newsaccess Fixed Assets to the Purchaser has been entered into upon terms which the Commission considered to be appropriate for the purposes of the Proposals.
3. In addition to the divestment of the Newsaccess Fixed Assets, as set out above, in order to facilitate market entry by the Purchaser, Kantar Media, with agreement from the Commission, has identified [...] Contract Customers of Newsaccess (each a "**Selected Contract Customer**") who may be released from the remaining term of their fixed term contract in accordance with paragraph 4 of these Proposals. As such, Kantar Media undertakes to procure that Newsaccess will distribute, on a once off basis, advertising material on behalf of the Purchaser to each of the Selected Contract Customers of Newsaccess. Kantar Media shall procure the distribution by Newsaccess of such advertising material to each of the Selected Contract Customers within fourteen (14) days of the receipt by Newsaccess of the advertising material from the Purchaser.
4. In the event that any of the Selected Contract Customers of Newsaccess which are referenced in paragraph 3 of these Proposals notifies Newsaccess of its decision to obtain a Media Monitoring Service from the Purchaser within one (1) month of receiving the advertising material from Newsaccess on behalf of the Purchaser, Kantar Media undertakes that it will procure that Newsaccess will: (a) release such Selected Contract Customer from the remainder of the term of its contract with Newsaccess; and (b) apply a notice period of no longer than thirty (30) days in respect of the termination of the Selected Contract Customer's contract with Newsaccess.
5. Kantar Media further undertakes that, for a period of twelve (12) months from the date of release of any Selected Contract Customer from their fixed term contract in accordance with paragraph 4 of these Proposals, neither Kantar Media nor Newsaccess will actively canvass or solicit any Selected Contract Customer of Newsaccess which decides to obtain a Media Monitoring Service from the Purchaser in accordance with



paragraph 4 of these Proposals. For the avoidance of doubt, during the twelve (12) month period referred to in this paragraph 5, nothing in these Proposals shall prevent Kantar Media or Newsaccess from providing a Media Monitoring Service to any Selected Contract Customer referenced in paragraphs 3, 4 and 5 of these Proposals in response to an unsolicited request to Kantar Media or Newsaccess from such Selected Contract Customer for the provision of a Media Monitoring Service provided that there has been no canvassing or solicitation of such Selected Contract Customer by either Kantar Media or Newsaccess.

6. Within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform the Purchaser of the commitment given in paragraphs 2 to 5 of these Proposals (the **Divestment Commitment**). In addition, within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform the Purchaser that the Purchaser should immediately notify Kantar Media in writing if the Purchaser perceives that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment. Upon receipt of a notification from the Purchaser that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment, if Kantar Media accepts that there has been a breach of the Divestment Commitment by Kantar Media and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Purchaser. If, within fourteen (14) days of being notified of the breach by the Purchaser, Kantar Media does not accept that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment, Kantar Media shall inform the Purchaser that the Purchaser has the right to inform the Commission of such perceived breach of the Divestment Commitment. Upon receipt of a notification from the Purchaser that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.
7. Kantar Media shall procure that Newsaccess will inform each Selected Contract Customer that notifies Newsaccess of its decision to obtain a Media Monitoring Service from the Purchaser (in accordance with paragraph 4 of these Proposals) of Newsaccess' obligations as set out in paragraphs 4 and 5 of these Proposals. In addition, within fourteen (14) days of receiving such notification from a Selected Contract Customer, Kantar Media shall procure that Newsaccess will inform such Selected Contract Customer that the Selected Contract Customer should immediately notify Kantar Media in writing if the Selected Contract Customer perceives that Kantar Media and/or Newsaccess has committed a breach of Kantar Media's and/or Newsaccess' obligations as set out in paragraphs 4 and 5 of these Proposals. Upon receipt of a notification from a Selected Contract Customer that Kantar Media and/or Newsaccess has committed a breach of the obligations as set out in paragraphs 4 and 5 of these Proposals, if Kantar Media Ireland accepts that there has been a breach of the obligations as set out in paragraphs 4 and 5 of these Proposals by Kantar Media and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Selected Contract Customer. If, within



fourteen (14) days of being notified of the breach by the Selected Contract Customer, Kantar Media does not accept that Kantar Media and/or Newsaccess has committed a breach of the obligations as set out in paragraphs 4 and 5 of these Proposals, Kantar Media shall inform the Selected Contract Customer that the Selected Contract Customer has the right to inform the Commission of such perceived breach of the obligations as set out in paragraphs 4 and 5 of these Proposals. Upon receipt of a notification from a Selected Contract Customer that Kantar Media and/or Newsaccess has committed a breach the obligations as set out in paragraphs 4 and 5 of these Proposals, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.

Staffing Commitment

8. Kantar Media undertakes to procure that Newsaccess will not enforce, or seek to enforce, any covenants restricting any former employee or member of staff of Newsaccess from being employed by a business which is currently providing or is intending to provide a Media Monitoring Service in the State, unless such staff member was a director of or shareholder in Newsaccess. For the avoidance of doubt, this paragraph 8 does not prevent Newsaccess from enforcing: (i) any confidentiality obligations imposed on any former employee or staff member of Newsaccess in respect of Newsaccess confidential information and (ii) any non-solicit obligations in respect of any former employee or member of staff of Newsaccess.

Pricing Commitment

9. Kantar Media undertakes to procure that Newsaccess will not unilaterally amend or vary, or seek to amend or vary, the prices agreed between Newsaccess and any Customer (including any Contract Customer) for the provision of a Media Monitoring Service by Newsaccess to such Customer prior to the Termination Date. For the avoidance of doubt, if Kantar Media or Newsaccess enters into a new fixed term contract with any Customer prior to 12 months from the Commencement Date, the Pricing Commitment as outlined in this paragraph 9 shall only apply for the period of twelve (12) months from the Commencement Date.
10. Within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform each Customer (including each Contract Customer) of the commitment given in paragraph 9 of these Proposals (the **Pricing Commitment**). In addition, within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform each Customer (including each Contract Customer) that the Customer should immediately notify Kantar Media in writing if the Customer perceives that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment, if Kantar Media accepts that there has been a breach of the Pricing Commitment by Kantar Media and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Customer. If, within fourteen (14) days of being notified of the breach by the Customer, Kantar Media



does not accept that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment, Kantar Media shall inform the Customer that the Customer has the right to inform the Commission of such perceived breach of the Pricing Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.

Archive Commitment

11. Kantar Media undertakes to procure that Newsaccess will continue to support Customers (including Contract Customers) in accessing and downloading media content through the Customer's Archive Facility up to and including 30 September 2017, in accordance with the following conditions:-

- a) In respect of a Contract Customer, Kantar Media undertakes to procure that the Contract Customer's Archive Facility and a copy of the media content provided by Newsaccess to the Contract Customer shall be made accessible by Newsaccess to the Contract Customer by means of access to the Contract Customer's Archive Facility at no additional cost to the Contract Customer provided that the Contract Customer is in possession of a valid NLI Archive Licence in respect of such archived media content;
- b) In respect of a Customer which has a rolling contract with Newsaccess, Kantar Media undertakes to procure that the Customer's Archive Facility and the media content provided by Newsaccess to the Customer shall be made accessible by Newsaccess to the Customer by means of access to the Customer's Archive Facility at no additional cost to the Customer provided that the Customer is in possession of a valid NLI Archive Licence in respect of such archived media content; and
- c) Within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess shall (i) inform each Customer (including Contract Customers) of the commitment outlined in this paragraph 11 (the **Archive Commitment**); and (ii) publish details of the Archive Commitment on the website of Newsaccess and shall procure that details of the Archive Commitment are maintained on that website for a period of one (1) month thereafter.

12. In addition, within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform each Customer (including Contract Customers) that the Customer should immediately notify Kantar Media in writing if the Customer perceives that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment, if Kantar Media accepts that there has been a breach of the Archive Commitment by Kantar Media



and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Customer. If, within fourteen (14) days of being notified of the breach by the Customer, Kantar Media does not accept that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment, Kantar Media shall inform the Customer that the Customer has the right to inform the Commission of such perceived breach of the Archive Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.

Merger Notification Commitment

13. For a period of two years after the Commencement Date, Kantar Media undertakes to inform the Commission of any proposed merger or acquisition by, or involving, Kantar Media of an undertaking involved in the provision of a Media Monitoring Service in the State which would not otherwise be notifiable to the Commission under Part 3 of the Act, or to the European Commission under Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings. In addition, Kantar Media shall, if required to do so by the Commission, notify any such proposed merger or acquisition in accordance with section 18(3) of the Act (or its successor provision, if applicable) if such proposed merger or acquisition is not required to be notified under section 18(1) of the Act (or its successor provision, if applicable).

C. Compliance

14. Kantar Media shall submit to the Commission within six (6) months of the Commencement Date, and, at intervals of six (6) months thereafter until the expiry of two (2) years after the Commencement Date, a written certificate in the form set out in the Schedule hereto (a “**Compliance Certificate**”), signed by the Managing Director of Kantar Media confirming that Kantar Media has complied with its obligations set out in these Proposals in the preceding six (6) month period. Such Compliance Certificates shall also include details of any instance in the preceding six (6) month period where a breach of the Proposals has been notified to Kantar Media by the Purchaser or by a Customer and any steps taken by Kantar Media to rectify any such breach.
15. The Commission reserves the right to require Kantar Media to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify Kantar Media’s compliance with its obligations set out in these Proposals. Kantar Media shall promptly provide to the Commission such information.
16. The Commission may provide written directions to Kantar Media from time to time to require compliance with these Proposals. Kantar Media shall comply promptly with any written directions issued by the Commission pursuant to these Proposals.



17. Kantar Media shall appoint a compliance director who will have responsibility for monitoring compliance with these Proposals and for responding to any requests for information received from the Commission in connection with these Proposals.
18. These Proposals will come into effect on the Commencement Date and will remain in force until the expiry of two (2) years after the Commencement Date.
19. In response to a reasoned request from Kantar Media, the Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals. At any time, subject to providing Kantar Media 30 days written notice and an opportunity for Kantar Media to provide a written submission to the Commission, the Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals.

Dated 11 July 2017

SIGNED for and on behalf of

MEDIAWATCH LIMITED, TRADING AS KANTAR MEDIA, by its truly authorised representative

By: _____

SCHEDULE TO THE PROPOSALS

[Kantar Media Headed Paper]

*[date]*¹

Ibrahim Bah
Director
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/17/012 Mediawatch Limited trading as Kantar Media (“Kantar Media”) / Newsaccess Limited (“Newsaccess”)

Dear Mr. Bah,

I refer to Merger Notification M/17/012 in relation to the acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess, which was notified to the Competition and Consumer Protection Commission (“Commission”) on 09 March 2017 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on [] July 2017.

In accordance with the terms of the proposals given by Kantar Media to the Commission on [] July 2017 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Kantar Media (“the Commitments”), I hereby confirm Kantar Media’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Kantar Media] and ending on the date hereof.

Yours faithfully,

[Name]

MD

Mediawatch Limited trading as Kantar Media

¹ This certificate should be dated and issued to the Competition and Consumer Protection Commission within six (6) months of the date of the Determination and, thereafter, within six (6) months after the date of submission of the first certificate issued to the Competition and Consumer Protection Commission and at intervals of six (6) months thereafter.